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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-345

UNITED STATES OF AMERICA,
Appellee,

versus

ROMAN CASEY, aka Melvin Ward,
Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BROOKS TAYLOR
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Crestview, Florida 32536

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1973

No.

UNITED STATES OF AMERICA,
Appellee,

versus

ROMAN CASEY, aka Melvin Ward,
Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner presents this, his petition for a Writ of Certiorari and states:

Petitioner seeks to have reviewed a decision of the United States Court of Appeals, for the Fifth Circuit, dated the 12th day of June, 1973, and filed in the records of said District Court on the 12th day of June, 1973 — Roman Casey vs. United States of America -72-3693, United States Court of Appeals, Fifth Circuit.

This petition is presented on the grounds that defendant was denied his Constitutional right to counsel as required by the 6th Amendment, which Amendment was made obligatory on the States by the 14th Amendment. Jurisdiction of this Court is pursuant to 28 U.S.C. Rule 19 in that the decision by the lower court on June 12, 1973 is in conflict with applicable decisions of this Court.

The lower court rendered its opinion on June 12, 1973 at which time the defendant filed a motion for re-hearing which was denied July 17, 1973. The defendant moved to stay the mandate which was denied on July 26, 1973. (petitions and orders attached)

The question presented this Court as it did the lower court is the denial of counsel to a defendant. The appellant here was indicted for violation of 18 U.S.C. Sec. 2, 371, 1343 and 2314.

STATEMENT OF FACTS

An indictment was rendered on July 25, 1972. Defendant retained an attorney, W. Paul Thompson, of DeFuniak Springs, Florida. Mr. Thompson appeared at the arraignment on November 2, 1972. The Judge stated at the trial on November 27th that W. Paul Thompson appeared at the arraignment on November 2nd and announced that he was representing the defendant. The defendant entered a not guilty plea. The date for trial was set on the 27th of November 1972. Hon. J. Reese Franklin, Assistant United States Attorney, stated that some time in September Mr. Paul Thompson had contacted the U.S. Attorney's office and re-

quested a copy of the indictment. Mr. Thompson, according to Mr. Franklin's statements, advised that "he was going to associate counsel". Mr. Franklin then stated that ten days before the trial date he had received a letter from Mr. Thompson stating that Mr. Thompson had been unable to associate counsel and that Mr. Thompson "was no longer going to represent Mr. Casey". .

Mr. Howard LaPorte appeared on the date set for trial. He argued a written motion for continuance stating that the defendant was no longer represented by counsel and that defendant wished to have time to acquire counsel to aid in his defense. The trial judge stated that there would be no continuance and that the court would deny the motion.

The following are statutes and the amendment involved in this case:

> 18 USC Sect. 2. (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.
>
> 18 USC Sect. 371. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such

persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 USC Sect. 1343. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Added July 16, 1952, c. 879, 18 (a), 66 Stat. 722, amended July 11, 1956, c. 561, 70 Stat. 523.

18 USC Sect. 2314. Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof —

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both:

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

Amendment VI — Constitution of the United States.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

ARGUMENT

The trial date of the defendant was set for November 27, 1972.

The Judge stated at the trial on November 27, 1972 that W. Paul Thompson appeared at the arraignment on November 2nd and announced that he was representing the defendant. The defendant entered a not guilty plea. The date for trial was set for the 27th day of November, 1972. Mr. Franklin, the Assistant United

States Attorney, then stated that ten days before the trial date he had received a letter from Mr. Thompson stating that Mr. Thompson had been unable to associate counsel and that Mr. Thompson "was no longer going to be representing Mr. Casey".

Because of the trial court's refusal to continue the case the defendant was forced to go to trial and represent himself. (From a reading of the transcript it appears that the defendant conducted his defense as well as could be expected of a layman.)

The defendant had retained Mr. Thompson to represent him. However, the Assistant U.S. Attorney received a letter some ten days before the trial date stating that Mr. Thompson was not representing the defendant. The defendant was told by Mr. Thompson that he had conflicts of interest and could not represent the defendant. However the defendant was told by Mr. Thompson that Mr. Thompson would find an attorney for him. No attorney was present at trial except Mr. LaPorte who appeared on the date of trial only for the special purpose of presenting the motion for continuance.

The Courts have been very specific as to a defendant's right to counsel. The Supreme Court's decision of *Gideon v. Wainwright*, 372 U.S. 335, 9Led 2d 799, 83 Supreme Court 792, 93 ALR 2d 733, is the leader in that field. In that case the defendant was charged and tried in a state court. He requested counsel to assist in his defense. The Supreme Court wrote:

> "Put to trial before a jury, Gideon conducted his defense as well as could be expected from a layman. He made an opening statement to the jury, cross-examined the State's witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument emphasing his innocence to the charge contained in the information filed in this case."

The Court stated further:

> "The Sixth Amendment provides, in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense."

The Court held in previous cases that the Sixth Amendment was made applicable to the State by the Fourteenth Amendment but it again stated that principal of *Gideon*. A defendant has a right to counsel. The majority of the cases before the Court have dealt with the right of an indigent to have assistance of counsel. The defendant here argues that the fact that he was able to hire an attorney should not work to place him at the mercy of the Government and require him, through circumstances, to go to trial without the assistance of counsel. The principals are the same for all and the language of Gideon is applicable to the defendant here. The defendant should not be punished because he could afford an attorney but was unable to obtain one because of unfortunate circumstances.

The Supreme Court in *Powell v. Alabama*, 287 U.S. 45, 77 Led, 53 S Ct 55, 84 ALR 527, recognized the importance of counsel when it said:

> "The right to be heard would be in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

The defendant here could quote many cases where the Supreme Court and this Court have held that an accused has a legal right to counsel. This principal is now so well known that the cases need not be quoted. The defendant in the case at hand had retained an attorney to act in his behalf. That attorney had stated he would handle the case, however, some time before the trial the defendant's attorney reported he could not represent the defendant. The Assistant United States Attorney stated: "I received a letter from Mr. Thompson on November 17, 1972, in which he indicated that he had not been able to associate counsel on this and that he was no longer going to be representing Mr. Casey.

The government thus had notification by letter that the defendant's attorney would not represent the defendant. Defendant thus was without counsel at the time of trial and pled with the trial judge to allow him time in which to acquire counsel. The Judge refused the request and stated the defendant could represent himself.

CONCLUSION

Appellant prays that this court will accept jurisdiction in this matter.

BROOKS TAYLOR

Attorney for Appellant
432 N. Main Street
Crestview, Florida

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing was this ____ day of August, 1973, furnished to Hon. J. Reese Franklin, Assistant U.S. Attorney, Federal Post Office Building, Thomasville, Georgia, by regular U.S. Mail.

Attorney for Appellant

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3693
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ROMAN CASEY, aka Melvin Ward,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

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(June 12, 1973)

Before BELL, GODBOLD and INGRAHAM, Circuit Judges.

PER CURIAM: Roman Casey was indicted and convicted for conspiring to defraud and obtain prop-

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*Rule 18, 5 Cir., *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al.*, 5 Cir., 1970, 431 F.2d 409.

erty from certain pecan growers in a multi-state area. The sole issue on this appeal is whether or not the district court erred in refusing to grant Roman Casey's motion for a continuance.

Casey was indicted on July 25, 1972. Arraignment was set for November 2, 1972, at which time Casey appeared with his retained counsel, a Mr. Thompson, and entered a plea of not guilty. The trial was set for November 27th and all parties were timely notified.

On the day of trial Mr. Casey employed an attorney for the sole and limited purpose of entering a motion for a continuance. The motion was denied and Mr. Casey proceeded to trial acting as his own counsel. It was admitted that Mr. Thompson, who had originally appeared with Casey, had given him notification that he would not be serving as his counsel on or about November 7, being at least twenty days before trial.

The facts of a particular case determine whether or not the denial of a request for continuance to obtain counsel is a violation of a person's Sixth Amendment guarantee. *Ungar v. Sarafite*, 376 U.S. 575 (1964).

We agree with the lower court that Casey had a reasonable time to procure counsel and was financially able to do so. His failure to retain an attorney was properly treated by the court as a waiver of his right to counsel. The freedom to choose one's counsel may not be used as a device to manipulate or subvert the orderly procedure of the courts or the fair adminis-

tration of justice. *United States v. Terry*, 449 F. 2nd 727 (5th Cir., 1971), and cases cited therein; *United States v. Sexton*, ____ F.2d ____ (5th Cir., 1973) [No. 72-2817, Feb. 6, 1973]. The grant of a continuance is a question vested in the discretion of the district court, *United States v. Hollis*, 450 F.2d 1207 (5th Cir., 1971). In the instant case the district court has not abused its discretion.

The judgment of the district court is AFFIRMED.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3693
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ROMAN CASEY, aka Melvin Ward,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

---

ON PETITION FOR REHEARING

(July 17, 1973)

Before BELL, GODBOLD and INGRAHAM, Circuit Judges.

PER CURIAM: IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

[Filed: Jul. 17, 1973]

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*Rule 18, 5 Cir.; See *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al.*, 5 Cir., 1970, 431 F.2d 409.

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3693

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

ROMAN CASEY, aka Melvin Ward,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

---

ORDER:

IT IS ORDERED that the motion of appellant filed in the above styled and numbered cause for a stay of the issuance of the mandate pending his petition for writ of certiorari in this cause be, and the same is hereby DENIED. See Fifth Circuit Local Rule 15, as amended January 11, 1972.

/s/ JOE INGRAHAM
UNITED STATES CIRCUIT
JUDGE

[Filed: Jul. 26, 1973]

APPENDIX D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3693

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ROMAN CASEY, aka Melvin Ward,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

Before BELL, GODBOLD and INGRAHAM, Circuit Judges.

ON CONSIDERATION of the motion of appellant for recall and stay of judgment issued as mandate in the above entitled and numbered cause,

IT IS ORDERED that said motion be, and it is hereby DENIED.

[Filed: Aug. 8, 1973]

APPENDIX E

MOTION FOR STAY OF MANDATE

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

versus

ROMAN CASEY, aka MELVIN WARD,
Appellant.

Comes now the Appellant and moves this Court to Stay the Mandate in this cause and would show:

1. That the Appellant herein will petition the Supreme Court for a Writ of Certiorari.

2. That the Appellant is a life long resident of Alabama and is engaged in business in the State of Alabama.

3. That even though this Court has denied petition for rehearing the Appellant and his attorney feel there is a compelling matter in this case for which the Supreme Court should grant certiorari.

4. This Appellant is married with a family of four children ranging in ages from nine to eighteen.

5. That this Appellant has never failed to appear in court when notified so to do.

6. That no harm will be suffered by the government if the mandate is stayed in this cause.

WHEREFORE, Appellant prays that the mandate will be stayed for the reasons herein set forth.

CERTIFICATE OF SERVICE

I, Brooks Taylor, certify that I have this date, by mail, served a copy of the foregoing upon the Attorney of Record for Appellee, Ronald T. Knight, Assistant U. S. Attorney, P.O. Drawer U, Macon, Georgia, this 23rd day of July, 1973.

BROOKS TAYLOR
/s/ BROOKS TAYLOR
Attorney for Appellant
432 N. Main Street
Crestview, Florida

APPENDIX F

MOTION FOR RECALL OF MANDATE

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

versus

ROMAN CASEY, aka MELVIN WARD,
Appellant.

Comes now the appellant and moves this Court to Recall the Mandate and would show:

1. This appellant is the sole proprietor of Bargain Sales Company, Highway 55 South, Andalusia, Alabama, and in business at said location for fifteen (15) years.

2. That appellant incorporates herein by reference the matters set forth in the Motion for Stay of Mandate and attaches a copy to this motion as Exhibit "A".

3. That appellant can demonstrate to the United States Supreme Court reversible error in this record.

4. Even though the appeal has been denied in this Court, appellant, if he must resort to collateral attack,

can demonstrate that the ten days notice given to him before trial, as alleged by the government, encompassed the period from November 17th to November 27th which because of holidays and weekends left only three business days for appellant to seek the aid of another lawyer.

5. That before this case appellant had never been arrested; has never failed to appear in court in this matter; has a business as herein alleged that he must liquidate and has a wife and four children that he must make arrangments for their care in his absence.

6. That no relaxation of the rules or extension of time have been given to this appellant in this cause before this motion and this is the first request by this appellant for any recall or extension of time in this court.

7. That a recall of the mandate herein will not work any hardship on the government or circumvent justice but rather will extend to this appellant the first and only request for extension that has been made in this court.

WHEREFORE, Appellant prays that the Mandate herein will be recalled.

I HEREBY CERTIFY that a copy of the foregoing was this 30th day of July, 1973, furnished to Hon. Ronald T. Knight, Assistant U.S. Attorney, P.O. Drawer U, Macon, Georgia, by regular U.S. Mail.

BROOKS TAYLOR
/s/ BROOKS TAYLOR
Attorney for Appellant
432 N. Main Street
Crestview, Florida

LIBRARY
SUPREME COURT, U. S.
No. 73-345
OCT 26 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

ROMAN CASEY A/K/A MELVIN WARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-345

ROMAN CASEY A/K/A MELVIN WARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The issue presented by the petition is whether the trial court abused its discretion in denying petitioner's motion for a continuance of trial to permit petitioner to obtain counsel.

After a jury trial in the United States District Court for the Middle District of Georgia, petitioner was convicted of conspiring to defraud and obtain property from certain pecan growers, in violation of 18 U.S.C. 371, 1341, and 2314. He was sentenced to five years' imprisonment on each of nine counts, the sentences to run concurrently. The court of appeals affirmed (Pet. App. A.).

The evidence concerning the motion for a continuance was as follows: The indictment was returned on July 25, 1972. Petitioner retained an attorney, W. Paul Thompson, who appeared at the arraignment on

November 2, 1972, when petitioner pleaded not guilty; at that time Thompson announced that he was representing petitioner (Tr. 13).[1] The following day, the Assistant United States Attorney wrote Mr. Thompson and petitioner informing them that trial was scheduled for November 27, 1972 (Tr. 14). Because the government's case required about 43 witnesses from various locations, many from out of state (Tr. 15-16), and because Mr. Thompson had previously informed the prosecutor that he intended to obtain associate counsel, the Assistant United States Attorney stressed in this letter that petitioner's counsel should be ready to proceed on the scheduled date (Tr. 14).

On November 7, 1972, Mr. Thompson informed petitioner that he was not going to represent him but would try to obtain associate counsel for him (Tr. 16-17). On November 17, 1972, Mr. Thompson wrote the Assistant United States Attorney informing him that he would no longer represent petitioner and that he had been unable to obtain associate counsel (Tr. 15). The Assistant United States Attorney had asked Mr. Thompson to impress upon petitioner that if he did not obtain a lawyer to help him in this case he would be forced to go to trial without counsel. Mr. Thompson told the Assistant United States Attorney that he related this message to petitioner (Tr. 18).

On November 27, 1972, William Howard LaPorte appeared specially to present a motion written by petitioner and to argue that motion for him. Mr. LaPorte was unable to represent petitioner at trial because he was not prepared, having appeared only for the purpose of presenting the motion (Tr. 11). Neither Mr. LaPorte

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[1] "Tr." refers to the transcript of the trial and of pretrial motions.

nor petitioner explained why the motion for a continuance had not been presented to the court prior to the trial date. The motion, *inter alia,* stated that petitioner had "contacted all attorneys which would be acceptable to him as counsel," but that he had not been able to retain a lawyer, that none would take his case.[2] Mr. LaPorte argued that petitioner had reasonably relied on Mr. Thompson's statement to petitioner on November 7, 1972, that he would try to obtain associate counsel for him. The trial court rejected this argument, stating that the case had been specially listed because of the number and location of the witnesses and that petitioner had had twenty days in which to get a new lawyer (Tr. 18-19). The case was ordered to trial and petitioner conducted his own defense (Pet. 7).

Petitioner's claim that the trial court abused its discretion in denying a continuance was properly rejected in the opinion of the court of appeals, upon which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

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[2] At no time did petitioner represent that he was indigent.